

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM GARFIELD BILBROUGH IV

*

FTC Oklahoma City

7410 S. MACARTHUR BLVD

*

Criminal Case No.: 8:20-cr-00033

OKLAHOMA CITY, OK 73169

BOP #65230-037; DOB

*

Civil Case No.: _____

(Full name, date of birth, identification #, address of movant)

(Leave blank. To be filled in by Court.)

v.

United States of America

*

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE

1. Name and location of the court which entered the judgment/conviction being challenged.

U.S. District Court for the District of Maryland - Greenbelt Division

2. Date of judgment or sentencing.

12/10/2020 - date of judgment

3. Length of sentence.

60 months' incarceration, 3 years of supervised release

4. Nature of offense (all counts). Count 1: conspiracy to transport certain aliens, 8 USC 1324(a)(1)(a)(v)(i)
Count 2: transporting certain aliens, 8 USC 1324(a)(1)(a)(ii)&(a)(1)(a)(v)(ii)
Count 3: conspiracy to transport and harbor certain aliens, 8 USC 1324(a)(1)(a)(v)(i)
Count 4: transporting certain aliens, 8 USC 1324(a)(1)(a)(ii)&(a)(1)(a)(v)(ii)
Count 5: harboring certain aliens, 8 USC 1324(a)(1)(a)(iii)&(a)(1)(a)(v)(ii)
5. What was your plea? (check one)

(a) Not Guilty ☐

(b) Guilty ☒

(c) Nolo Contendere ☐

If you entered different pleas to different counts or charges, explain.

Pleaded guilty to Counts 1 & 2; Counts 3-5 were dismissed.

6. Kind of trial (check one). N/A

(a) Jury ☐

(b) Judge Only ☐

7. Did you testify at the trial? N/A

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

If you answered yes, provide the following information:

A. What grounds did you raise?

N/A

B. What was the result?

N/A

C. What was the date of the decision by the Court of Appeals?

N/A

9. Did you file a petition for writ of certiorari to the United States Supreme Court?

Yes ☐ No ☒

If you answered yes, what was the result?

N/A

If you answered yes, what was the date of the decision by the Supreme Court?

N/A

10. Other than a direct appeal, have you filed any petitions, applications, or motions challenging this judgment in any federal court?

Yes ☐ No ☒

11. If you answered yes, provide the following information for **each** petition, application, or motion:

A. Name and location of the court where you filed.

N/A

B. Describe what you filed and the date on which it was filed.

N/A

C. What grounds did you raise?

N/A

D. What was the result?

N/A

E. What was the date of the decision?

N/A

F. Did you appeal the decision? N/A

Yes ☐ No ☐

G. What was the result?

N/A

H. If you did not appeal any adverse decision, explain why you did not appeal.

N/A

12. Do you CURRENTLY HAVE PENDING in any court any motion, petition, or appeal concerning the judgment being challenged in this petition?

Yes ☐ No ☒

If you answered yes, describe what you filed, when, where, and its current status.

N/A

13. In most cases federal law requires that a motion to vacate or set aside judgment be filed within one (1) year of the date your conviction became final. 28 U.S.C. § 2255. If this motion is being filed more than one year after your conviction became final, explain why it is late and/or why you believe the one year limitations period does not apply.

Since the movant did not appeal the original conviction, the judgment became final when the time during which he could have appealed expires (14 days after entry of judgment). Thus, the instant 2255 motion is raised within the one-year statute of limitations as contained in 28 U.S.C. § 2255.

14. State BRIEFLY every ground on which you claim you are being held unlawfully. BRIEFLY summarize the facts supporting each ground. If necessary, you may attach additional pages.

A. Ground One: Ineffective Assistance of Counsel

Supporting Facts: Former counsel was ineffective for failing to sufficiently advise Movant relating to his decision to enter into the plea agreement, especially the the consequences of the upward departure contained therein; and Movant felt pushed to accept the plea. It prejudiced Movant because, due to the upward departure, he was sentenced to 60 months which was approximately twice of the applicable Guidelines range; contrary to his rights to Due Process and Sixth Amendment to the U.S. Constitution. Had trial counsel properly advised Movant in this regard, he would not have taken the plea offer. Former counsel was also ineffective for filing a motion for immediate sentencing, which prejudiced Movant by depriving any meaningful opportunity to obtain, review, and object to a Pre-Sentence Report and to filing other sentencing submissions.

B. Ground Two: The sentence was imposed in violation of Movant's Due Process rights.

Supporting Facts: The sentencing court did not make sufficient findings in support of the sentence imposed, especially sufficient findings to justify the significant upward departure under U.S.S.G. 2L1.1 Application Note 7, in violation of Movant's constitutional rights to Due Process under the Fifth Amendment to the U.S. Constitution.

C. Ground Three: _____

Supporting Facts: _____

D. Ground Four: _____

Supporting Facts: _____

15. If any of the issues that you are raising in this motion have not been previously presented, explain which issues are being raised for the first time and why.

Ground One: the claim in Ground One is more appropriately raised in a 2255 motion.

Ground Two: the right to appeal sentence was waived pursuant to the Plea Agreement.

16. Do you have any other sentence(s) to be served after you complete the sentence/commitment that is being challenged in this petition?

Yes ☐ No ☒

If you answered yes, provide the following information about each of your future sentences:

A. Name and location of the court that imposed the sentence.

N/A

B. Length of the sentence. N/A

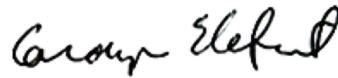
C. Have you filed, or do you intend to file, a petition or motion attacking this sentence?

Yes ☐ No ☒

WHEREFORE, Movant prays that the Court grant him/her all relief to which he/she may be entitled in this action. Movant prays that the Court vacate his conviction and sentence .

I declare under the penalties of perjury that the information above is true and correct.

SIGNED THIS 27th day of December, 2021.



Signature

Pro Hac Vice Counsel

Carolyn Elefant MDD Bar #26862

Printed Name

7315 Wisconsin Ave., 4th FL. West, Bethesda, MD 20418

Address

202-297-6100

Telephone Number

carolyn@carolynelefant.com

Email Address

Katryna Lyn Spearman*, Ga. Bar

Printed Name Counsel for William Billbrough
#616038

101 Marietta St. NW, Ste. 3325

Address

404-496-4052

Telephone Number

kspearman@lowtherwalker.com

Email Address

*Pro hac vice motion pending

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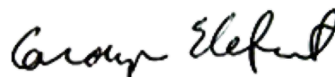
v.

United States of America

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2021,
a copy of the foregoing Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255
with the District of Maryland via the CM/ECF system which will automatically serve a copy via email
on all concerned parties.



Signature

Carolyn Elefant

Printed Name

7315 Wisconsin Ave., Bethesda, MD 20814
Address

202-297-6100
Telephone Number

carolyn@carolynelefant.com
Email Address